



DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 217

RIN 1601-AA94

Designation of Poland for the Visa Waiver Program

AGENCY: Office of the Secretary, Department of Homeland Security (DHS).

ACTION: Final rule; technical amendment.

SUMMARY: Eligible citizens, nationals, and passport holders from designated Visa Waiver Program countries may apply for admission to the United States at U.S. ports of entry as nonimmigrant aliens for a period of ninety days or less for business or pleasure without first obtaining a nonimmigrant visa, provided that they are otherwise eligible for admission under applicable statutory and regulatory requirements. On October 31, 2019, the Secretary of Homeland Security, in consultation with the Secretary of State, designated Poland as a country that is eligible to participate in the Visa Waiver Program. Accordingly, this rule updates the list of countries designated for participation in the Visa Waiver Program by adding Poland.

DATES: This final rule is effective on November 11, 2019.

FOR FURTHER INFORMATION CONTACT: Erik Rye, Department of Homeland Security, Visa Waiver Program Office, (202) 282-9907.

SUPPLEMENTARY INFORMATION:

I. BACKGROUND

A. The Visa Waiver Program

Pursuant to section 217 of the Immigration and Nationality Act (INA), 8 U.S.C. 1187, the Secretary of Homeland Security (the Secretary), in consultation with the Secretary of State, may designate certain countries as Visa Waiver Program (VWP) countries¹ if certain requirements are met. Those requirements include, without limitation: (1) a U.S. Government determination that the country meets the applicable statutory requirement with respect to nonimmigrant visitor visa refusals for nationals of the country; (2) an official certification that it issues machine-readable, electronic passports that comply with internationally accepted standards; (3) a U.S. Government determination that the country's designation would not negatively affect U.S. law enforcement and security interests; (4) an agreement with the United States to report, or make available through other designated means, to the U.S. Government information about the theft or loss of passports; (5) a U.S. Government determination that the government accepts for repatriation any citizen, former citizen, or national not later than three weeks after the issuance of a final executable order of removal; and (6) an agreement with the United States to share information regarding whether citizens or nationals of the country represent a threat to the security or welfare of the United States or its citizens.

¹ All references to "country" or "countries" in the laws authorizing the Visa Waiver Program are read to include Taiwan. See Taiwan Relations Act of 1979, Pub. L. 96-8, section 4(b)(1) (codified at 22 U.S.C. 3303(b)(1)) (providing that "[w]henver the laws of the United States refer or relate to foreign countries, nations, states, governments, or similar entities, such terms shall include and such laws shall apply with respect to Taiwan"). This is consistent with the United States' one-China policy, under which the United States has maintained unofficial relations with Taiwan since 1979.

The INA also sets forth requirements for continued eligibility and, where appropriate, probation and/or termination of program countries.

Prior to this final rule, the designated countries in the VWP were Andorra, Australia, Austria, Belgium, Brunei, Chile, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Monaco, the Netherlands, New Zealand, Norway, Portugal, Republic of Korea, San Marino, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan,² and the United Kingdom.³ See 8 CFR 217.2(a).

Citizens and eligible nationals of VWP countries may apply for admission to the United States at U.S. ports of entry as nonimmigrant visitors for a period of ninety days or less for business or pleasure without first obtaining a nonimmigrant visa, provided that they are otherwise eligible for admission under applicable statutory and regulatory requirements. To travel to the United States under the VWP, an alien must satisfy the following:

- (1) be seeking admission as a nonimmigrant visitor for business or pleasure for ninety days or less;
- (2) be a national of a program country;

² Taiwan refers only to individuals who have unrestricted right of permanent abode on Taiwan and are in possession of an electronic passport bearing a personal identification (household registration) number.

³ The United Kingdom refers only to British citizens who have the unrestricted right of permanent abode in the United Kingdom (England, Scotland, Wales, Northern Ireland, the Channel Islands, and the Isle of Man); it does not refer to British overseas citizens, British dependent territories' citizens, or citizens of British Commonwealth countries.

- (3) present a machine-readable, electronic passport issued by a designated VWP participant country to the air or vessel carrier before departure;
- (4) execute the required immigration forms;
- (5) if arriving by air or sea, arrive on an authorized carrier;
- (6) not represent a threat to the welfare, health, safety, or security of the United States;
- (7) have not violated U.S. immigration law during any previous admission under the VWP;
- (8) possess a round-trip ticket, unless exempted by statute or federal regulation;
- (9) the identity of the alien has been checked to uncover any grounds on which the alien may be inadmissible to the United States, and no such ground has been found;
- (10) certain aircraft operators, as provided by statute and regulation, must electronically transmit information about the alien passenger;
- (11) has not been present at any time after March 1, 2011 in Iraq, Syria, or any other country so designated by statute and regulation;
- (12) waive the right to review or appeal a decision regarding admissibility or to contest, other than on the basis of an application for asylum, any action for removal; and
- (13) obtain an approved travel authorization via the Electronic System for Travel Authorization (ESTA). For more information about the ESTA, please see 8 CFR 217.5 (regulation effective July 8, 2015), 80 FR 32267 (June 8, 2015), 75 FR 47701 (Aug. 9, 2010).

See sections 217(a) and 217(b) of the Immigration and Nationality Act (INA), 8 U.S.C. 1187(a)-(b); see also 8 CFR part 217.

B. Designation of Poland

The Department of Homeland Security, in consultation with the Department of State, has evaluated Poland for VWP designation to ensure that it meets the requirements set forth in section 217 of the INA, as amended by section 711 of the Implementing Recommendations of the 9/11 Commission Act of 2007, Pub. L. 110-53. The Secretary has determined that Poland has satisfied the statutory requirements for initial VWP designation; therefore, the Secretary, in consultation with the Secretary of State, has designated Poland as a program country.⁴

This final rule adds Poland to the list of countries authorized to participate in the VWP. Accordingly, beginning November 11, 2019, eligible citizens and nationals of Poland may apply for admission to the United States at U.S. ports of entry as nonimmigrant visitors for business or pleasure for a period of ninety days or less without first obtaining a nonimmigrant visa, provided that they are otherwise eligible for admission under applicable statutory and regulatory requirements.

II. STATUTORY AND REGULATORY REQUIREMENTS

A. Administrative Procedure Act

Under the Administrative Procedure Act (5 U.S.C. 553(b)), an agency may waive the normal notice and comment requirements if it finds, for good cause, that they are impracticable, unnecessary, or contrary to the public interest. The final rule merely lists a

⁴ The Secretary of State nominated Poland for participation in the VWP on October 3, 2019.

country that the Secretary of Homeland Security, in consultation with the Secretary of State, has designated as a VWP eligible country in accordance with section 217(c) of the INA, 8 U.S.C. 1187(c). This amendment is a technical change to merely update the list of VWP countries. Therefore, notice and comment for this rule is unnecessary and contrary to the public interest because the rule has no substantive impact, is technical in nature, and relates only to management, organization, procedure, and practice. For the same reasons, pursuant to 5 U.S.C. 553(d)(3), a delayed effective date is not required.

This final rule is also excluded from the rulemaking provisions of 5 U.S.C. 553 as a foreign affairs function of the United States because it advances the President's foreign policy goals and directly involves relationships between the United States and its alien visitors. Accordingly, DHS is not required to provide public notice and an opportunity to comment before implementing the requirements under this final rule.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 603(b)), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996 (SBREFA), requires an agency to prepare and make available to the public a regulatory flexibility analysis that describes the effect of a proposed rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions) when the agency is required "to publish a general notice of proposed rulemaking for any proposed rule." Because this rule is being issued as a final rule, on the grounds set forth above, a regulatory flexibility analysis is not required under the RFA.

DHS has considered the impact of this rule on small entities and has determined that this rule will not have a significant economic impact on a substantial number of

small entities. The individual aliens to whom this rule applies are not small entities as that term is defined in 5 U.S.C. 601(6). Accordingly, there is no change expected in any process as a result of this rule that would have a direct effect, either positive or negative, on a small entity.

C. Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

D. Executive Order 12866

This amendment does not meet the criteria for a “significant regulatory action” as specified in Executive Order 12866.

E. Executive Order 13132

The rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, DHS has determined that this final rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

F. Executive Order 12988 Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

G. Paperwork Reduction Act

The Department of Homeland Security is modifying OMB Control Number 1651-0111, Arrival and Departure Record, to allow eligible Poland passport holders to use the Electronic System for Travel Authorization (ESTA) to apply for authorization to travel under the VWP prior to departing for the United States. CBP uses the information to assist in determining if an applicant is eligible for travel under the VWP. The Department is requesting emergency processing of this change to 1651-0111 as the information is essential to the mission of the agency and is needed prior to the expiration of time periods established under the PRA. Because of the designation of Poland for participation in the VWP, the Department is requesting OMB approval of this information collection in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

The addition of Poland to the Visa Waiver Program will result in an estimated annual increase to information collection 1651-0111 of 300,000 responses and 75,000 burden hours. The total burden hours for ESTA, including Poland, is as follows:

Estimated annual reporting burden: 3,625,000 hours.

Estimated number of respondents: 14,500,000 respondents.

Estimated average annual burden per respondent: 15 minutes.

List of Subjects in 8 CFR Part 217

Air carriers, Aliens, Maritime carriers, Passports and visas.

Amendments to the Regulations

For the reasons stated in the preamble, DHS amends part 217 of title 8 of the Code of Federal Regulations (8 CFR part 217) as set forth below.

PART 217—VISA WAIVER PROGRAM

1. The general authority citation for part 217 continues to read as follows:

Authority: 8 U.S.C. 1103, 1187; 8 CFR part 2.

2. In § 217.2(a), the definition of “Designated country” is revised to read as follows:

§ 217.2 Eligibility.

(a) * * *

Designated country refers to Andorra, Australia, Austria, Belgium, Brunei, Chile, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Monaco, the Netherlands, New Zealand, Norway, Poland, Portugal, Republic of Korea, San Marino, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan, and the United Kingdom. The United Kingdom refers only to British citizens who have the unrestricted right of permanent abode in the United Kingdom (England, Scotland, Wales, Northern Ireland, the Channel Islands, and the Isle of Man); it does not refer to British overseas citizens, British dependent territories’ citizens, or citizens of British Commonwealth countries. Taiwan refers only to individuals who have unrestricted right of permanent abode on Taiwan and are in possession of an electronic passport bearing a personal identification (household registration) number.

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Kevin McAleenan,
Acting Secretary.

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